

### **REMARKS**

Applicants would like to thank the Examiner for discussing the present case with Applicants' representative. Within the present application claim 1 is the only claim currently pending.

### **REJECTIONS UNDER 35 U.S.C. § 102(e):**

Claim 1 is said to be rejected under 35 U.S.C. § 102(e) as being anticipated by *Offord et al.* (U.S. Patent No. 6,617,268). In response, Applicants have enclosed the revised Declaration under 37 CFR 1.131 to remove the cited reference from consideration as prior art. Applicants are including a page that references the discussed polyols as polyethylene glycol.

Applicants would like to bring to the PTO's attention that the present Declaration and supporting material which has been found to be unpersuasive in the present action were previously accepted by the PTO as persuasive in overcoming a previous reference whose priority date differed from the *Offord et al.* reference by only a few months. Applicants in that instance had requested from the PTO as to what would be acceptable supporting material. The previously submitted material was determined to be acceptable and Applicants submitted such to overcome the previous reference.

In the present case, Applicants have submitted the same supporting materials to overcome the *Offord et al.* reference with the belief that such would continue to be found persuasive. Applicants would respectfully request that the PTO reconsider the present revised Declaration

under 37 CFR 1.131 and supporting material which now reference the polyol as polyethylene glycol.

**REJECTIONS UNDER 35 U.S.C. § 102(b):**

Claim 1 has been rejected under 35 U.S.C. § 102(b) as being anticipated by the articles (“Vigo articles”) entitled “Multipurpose woven cotton and cotton/polyester blends containing cross-linked polyols affixed by a low temperature cure” and “Improvement of various properties of fiber surfaces containing cross-linked polyethylene glycols.”

The articles are said by the PTO to teach a cross-linking agent and acid catalyst to a woven fabric. The articles are said to further teach removing excess solution, drying and curing at a temperature range between about 176 to 230 degrees Fahrenheit or 212 to 302 degrees Fahrenheit. The fabric is further said by the PTO to be washed in a phosphate detergent.

Additionally, Applicants amendment in the previous response was said to necessitate the new grounds of rejection presented in the present Official Action. Thus, the present action has been made final.

**Anticipation**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Vigo articles fail to teach each and every element as set forth in the claim of the present application. Specifically, Applicants’ claim step of neutralizing the treated fabric to a pH between about 6.5 to about 7.5 to form a neutralized fabric is not taught in the Vigo articles.

Within the Official Action the PTO fails to assert in the Official Action that the Vigo articles teach such a limitation as recited in claim 1. As previously noted, for a reference to anticipate a claim it must teach each and every element in the claim. The Vigo articles do not teach the neutralization step claimed in the present application and thus the references do not anticipate that which is claimed in the present application.

The neutralization step in the present application is critical and unrecognized by the Vigo articles as a needed or necessary step in the process. Neutralization sets the formulation in the fabric. Without the performance of the neutralization step, the formulation leaches out of the fabric and renders the garment useless. The Vigo articles each teach the step of using an acid catalyst. The fabrics treated in the Vigo articles are acidic and remain so, since washing with soap and water does not neutralize a fabric.

Additionally, Vigo fails to recognize the upper limit of the temperature range claimed in the present application with the required specificity. While the Vigo articles may disclose a range that overlaps the claimed range, the Vigo articles lack a specific example falling within the claimed range. Anticipation requires that the claimed subject matter be disclosed in the reference with sufficient specificity to constitute anticipation. MPEP § 2131.03.

Furthermore, a reference may lack such sufficient specificity if the claims are directed to a narrow range and the reference teaches a broad range when combined with evidence of unexpected results. *Id.* The present application claims a surface temperature not exceeding 220°F. The Vigo articles are silent as to teaching such an upper limit for the surface temperature of the fabric. The claimed upper temperature limit restricts the surface temperature range. This restricted surface temperature range produces the unexpected result of both increased hand and

preventing scorching. Temperatures that are elevated beyond that which is claimed can result in over curing, which results in increased crosslinking that produces a stiff fabric. Scorching degrades both the formulation and fabric. The Vigo articles are silent as to this unexpected result of restricting the temperature range. Thus, the articles neither teach nor suggest that which is taught in the present application.

Additionally, Applicants can rebut a *prima facie* case of obviousness based on overlapping ranges by showing the criticality of the claimed range. MPEP § 2144.05. "The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. . . . In such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range." *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

The criticality of the claimed upper temperature limit is not recognized in the cited Vigo articles. The upper temperature limit is critical in preventing scorching. Further exemplifying the criticality of the upper temperature limit, Applicants claim that the surface temperature must not exceed 220°F, which can differ greatly from a simple oven temperature setting as is disclosed in the Vigo articles. The Vigo articles are silent as to the surface temperature of the fabric. The surface temperature of the fabric may be different than an overall oven temperature. Applicants' *Exhibits 1, 2, and 3* in support of the present Declaration under 37 C.F.R. 1.131 further support the criticality of the claimed temperature range in the prevention of scorching. Within the exhibits it is shown that the surface temperature of the fabric should not exceed a certain surface temperature of the fabric or scorching can occur. *Exhibit 1*, pg. 1, paragraphs 1 and 2. The

criticality of the upper temperature limit of the fabric surface in the prevention of scorching and degradation is unrecognized in the cited Vigo articles. Thus, the cited art does not teach or suggest that which is claimed in the present application.

Applicants respectfully assert the prior art either alone or in combined does not teach or suggest that which is claimed in the present application.

### **Finality of Action**

Applicants respectfully request the withdrawal of the finality of the present action. Applicants' amendment made in the previous response consisted of removing the term "about" modifying the maximum surface temperature of the fabric. Additionally, Applicants made a nonsubstantive amendment to correct a minor informality. The amendments did not substantially change or modify the claims as to require the new grounds for rejection.

MPEP § 706.07 (a) states that "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment...". While the MPEP provides little guidance as to the meaning of "necessitated", the American Heritage Dictionary defines the word to mean require or compel.

Applicants' amendment removing the term "about" did not compel the citing of the Vigo articles. The Vigo articles are merely cumulative of the art previously before the PTO.

Applicants' originally filed Information Disclosure Statement (IDS) included U.S. Patent Nos. 4,851,291, 4,871,615 and 4,908,238 each to Vigo et al. The Vigo et al. patents either alone or in combination disclose that which is taught in the newly cited Vigo articles. Applicants removal of

the term “about” could not have compelled the citing of the Vigo articles since that taught in the articles was already before the PTO.

The removal of the term “about” simply made the upper temperature range limit more definite, such that the surface temperature of the fabric does not exceed 220°F. The Vigo articles are noted by the PTO as teaching curing a fabric at a temperature between 176 to 230°F and 212 to 302°F. The previously cited Vigo et al. patents essentially teach the same. The removal of the term “about” does not require or compel the citing of cumulative art that has been before the PTO since the start of prosecution. Applicants’ amendment did not render the cumulative Vigo art relevant. A temperature not exceeding “about” 220°F and a temperature not exceeding 220°F would fall within the disclosed ranges of the Vigo articles. Thus, Applicants’ amendment did not compel the citing of the Vigo articles since such disclosures have been before the PTO since the beginning of the prosecution of the present application.

## CONCLUSION

Applicants respectfully contend that claim 1 is allowable and an early notice of such effect is earnestly solicited. Should the Examiner have any questions or comments regarding the foregoing Response, she is invited and urged to telephone the undersigned attorney.

Respectfully Submitted,



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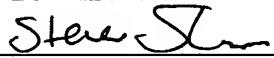
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